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2 Marcella's expertise or advice?

3 MR. SANTAMARIA: Ms. Marcella is one
4 of my super -- I'll explain it. Ms.
5 Marcella is like a supervising principal
6 for me, and if she was advised by her
7 (inaudible)

8 MR. GROSSMAN: Okay. All right, I
9 just wanted to make sure where it came
10 from.

11 MR. SANTAMARIA: Um-hm.

12 MR. GROSSMAN: Okay, I have no
13 further questions.

14 Now, Ms. Marcella, --

15 MS. MARCELLA: Yes.

16 MR. GROSSMAN: -- did you call the
17 Office of Special Investigations, Special
18 Commissioner of Investigations, regarding
19 Mr. Storman, based on an accusation made
20 by Student A's father?

21 MS. MARCELLA: No, I didn't call, I
22 put it online.

23 MR. GROSSMAN: Oh, you put it
24 online.

25 MS. MARCELLA: Yes.

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2 MR. GROSSMAN: But, however, did you
3 put it online on the basis of an
4 accusation that was made by the father of
5 Student A?

6 MS. MARCELLA: Yes, I just reported
7 what was -- the information that was given
8 to me.

9 MR. GROSSMAN: Okay. Now, did
10 Student A's father relate to you that Mr.
11 Storman brushed a rolled up piece of paper
12 against his son's lips, and that Mr.
13 Storman was acting out a sexual fantasy?

14 MS. MARCELLA: That's what the
15 father claimed.

16 MR. GROSSMAN: Now, if Student A's
17 father omitted his son's theory or his
18 theory about the alleged sexual fantasy,
19 would you still have called the Office of
20 the Special Commissioner?

21 MS. MARCELLA: I'm sorry. Sir, I
22 missed the last few words, I'm sorry.

23 MR. GROSSMAN: I'll repeat it.

24 Suppose -- it is hypothetical, but if
25 Student A's father omitted the part about

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1
2 his son's theory or the father's theory
3 about the alleged sexual fantasy, would
4 you have still call the Office of the
5 Special Commissioner of Investigations?

6 MS. MARCELLA: Yes, I would have
7 reported it because --

8 MR. GROSSMAN: I didn't ask you why.
9 I just asked you if you would or you
10 wouldn't?

11 MS. MARCELLA: Okay, I would have.

12 MR. GROSSMAN: All right. Now, did
13 you call the Office of the Special
14 Commissioner on the same day Student A's
15 father called you?

16 MS. MARCELLA: I could tell you that
17 in a minute, sir, just hold on.

18 MR. GROSSMAN: That's all right.
19 I'm going by the report.

20 MS. MARCELLA: Yes. The date here
21 is 10/26/04. The report was made
22 10/26/04.

23 MR. GROSSMAN: You made the report
24 10/26/04?

25 MS. MARCELLA: That's what it says.

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2 The control number I have in front of me,
3 it looks like 10/26/04.

4 MR. GROSSMAN: Well, according to
5 the origin of the complaint on 2.1, it --

6 MS. MARCELLA: One second.

7 MR. GROSSMAN: Yes.

8 MS. MARCELLA: I'm looking at the
9 papers in front of me because it was in
10 October. It says that the control number
11 has been generated for this report
12 10/26/04.

13 MR. GROSSMAN: Now, --

14 MS. MARCELLA: One second -- 11 --
15 I'll tell you in a minute. I have to
16 refresh my memory. It was a while ago.

17 MR. GROSSMAN: If you look at 2.1,
18 that could refresh your memory.

19 MR. GOLDBERG: If you look at the
20 report in the first paragraph.

21 MS. MARCELLA: In the report, one
22 second -- 11/16. Yes, okay. What
23 happened was, it happened October 26th,
24 and the father called me a few days after
25 that happened. What happened was, the

1
2 child was absent from school, and when we
3 called the house to find out why the child
4 was absent, the father spoke to me and he
5 said that he had been trying to get the
6 school, and he's not sending back the
7 child because of this teacher being in the
8 school that did something to his child.

9 So, I said, well, sir, I have to
10 speak to your child. Please send your
11 child back to school, and he said, well, I
12 don't want my child questioned until I'm
13 there with him, and the father did not
14 come until 11/16, whatever that day is,
15 and that's when I reported it when the
16 father came up.

17 MR. GROSSMAN: Okay. So, therefore,
18 what you're saying is that you reported
19 this incident, waiting for this child --

20 MS. MARCELLA: I didn't know what it
21 was.

22 MR. GROSSMAN: -- three weeks --

23 MS. MARCELLA: The father refused to
24 tell me until he was with --

25 MR. GROSSMAN: Ma'am, I'm going by

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the facts. You waited three weeks after the alleged incident had occurred to make a report; is that correct?

MS. MARCELLA: Sir, I couldn't make a report if I didn't know what the incident was. The man refused to tell me.

MR. GROSSMAN: I didn't ask you whether or not -- whether you could or your couldn't. I'm just establishing a fact that you waited three weeks after the alleged incident before you made a report because obviously, you could have made a report, and could not --

MS. MARCELLA: No, I could not because if you're familiar with the online occurrence reports, if you don't put in certain information, it won't take the report.

MR. GROSSMAN: So, if that child never came back to school at all, then you would never have -- then you would never have made a report.

MS. MARCELLA: No, I wouldn't know what to put in. If you go online and try

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1
2 to put in the report, you'll know what I
3 mean. I've been doing it for three years.

4 MR. GROSSMAN: Okay. I wanted to
5 establish that this was done three weeks
6 later.

7 MS. MARCELLA: It was done the
8 minute I found out about what had
9 happened.

10 MR. GROSSMAN: Uh-huh.

11 Is it a fact that when you spoke with
12 Mr. Storman, after the incident, that you
13 told him you had no intention of making
14 any such report and you only did it after
15 the father called you; isn't that correct?

16 MS. MARCELLA: Absolutely not.

17 MR. GROSSMAN: Okay.

18 MS. MARCELLA: I report everything
19 that comes by me, everything.

20 MR. GROSSMAN: But you reported it
21 three weeks after the incident.

22 MS. MARCELLA: I didn't know what
23 the incident was, sir.

24 MR. GROSSMAN: I have no further
25 questions.

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2 You didn't know what the incident
3 was?

4 MS. MARCELLA: No.

5 MR. GROSSMAN: Okay.

6 MS. MARCELLA: I could not report
7 something on a teacher if I don't know
8 what it is.

9 MR. GROSSMAN: Well, the father had
10 already called you, so you had some
11 knowledge of the incident.

12 MS. MARCELLA: But I didn't know
13 what the incident was, sir.

14 MR. GROSSMAN: Even though the
15 father called you?

16 MR. GOLDBERG: Mr. Grossman, --

17 MS. MARCELLA: He said to me, you
18 cannot speak to my son.

19 MR. GOLDBERG: -- she answered it.
20 She answered it.

21 MR. GROSSMAN: Fine.

22 MS. MARCELLA: I answered it.

23 MR. GOLDBERG: Okay, Ms. Marcella.
24 Yes.

25 MR. BOYLES: The online system for

1
2 filing complaints, if certain data is not
3 entered, it won't allow you to go to the
4 next -- to continue.

5 MS. MARCELLA: Thank you.

6 MR. GROSSMAN: Let me question Mr.
7 Boyles.

8 Mr. Boyles, is it fair to say that
9 your report was written in the third
10 person, that is, it paraphrased the
11 statements made by the people who were
12 interviewed?

13 MR. BOYLES: That is correct.

14 MR. GROSSMAN: Now, did you
15 proofread this report before it was sent
16 to Mr. Hylan?

17 MR. BOYLES: Yes.

18 MR. GROSSMAN: Okay. Did Mr.
19 Storman have the same opportunity to
20 proofread your report before it was sent
21 to Mr. Hylan?

22 MR. BOYLES: No.

23 MR. GROSSMAN: Were your interviews
24 audio or videotaped?

25 MR. BOYLES: No.

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MR. GROSSMAN: Do you have transcripts of your interviews, that is questions made -- questions asked and answers made?

MR. BOYLES: No.

MR. GROSSMAN: In your background check of Mr. Storman, did you conclude that there were no previous corporal punishment accusations made against him?

MR. BOYLES: I believe he had one prior case of harassment which was unsubstantiated.

MR. GROSSMAN: No, I'm not asking about harassment --

MR. BOYLES: No, no prior cases.

MR. GROSSMAN: -- or anything unsubstantiated, but there were no priors --

MR. BOYLES: No.

MR. GROSSMAN: -- as far as corporal punishment. Okay.

Now, when you interviewed Student A, did he contradict what he originally claimed regarding his theory that Mr.

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2 Storman acted out of a sexual fantasy by
3 stating to you that he does not believe
4 that Mr. Storman's action was sexual in
5 nature?

6 MR. BOYLES: Yes, but he didn't --
7 well, the original complaint was his
8 father's words. I don't know where the
9 father got that from, if the son had told
10 him that, but when I spoke to Student A,
11 he told me that Mr. Storman made physical
12 contact with him with the piece of paper.
13 When I questioned him about it being
14 sexual in nature, he said he didn't
15 believe it was sexual in nature.

16 MR. GROSSMAN: But prior to your
17 speaking with Student A, was that
18 accusation regarding a sexual nature made
19 to you?

20 MR. BOYLES: It was made to me in
21 the written complaint.

22 MR. GROSSMAN: Now, you heard the
23 principal state before that the principal
24 could not send you anything online until
25 she had the conversation with the student'

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is that correct, you heard that?

MR. BOYLES: That is correct.

MR. GROSSMAN: So, therefore, wouldn't it be logical then that the student repeated the same thing that the father said if that was the basis of her sending you something online regarding the accusation? She wouldn't go by what the father said. She would only go by what the student said. So, therefore, if you heard something about a sexual nature, by logic, that came from the student then.

MR. BOYLES: Standard procedure for reporting cases, anything -- when anything sexual is mentioned, it goes to the Office of Special Commissioner. When it's inappropriate touching or corporal punishment or verbal abuse, the complaint goes to the Office of Special Investigations.

In this particular case, and I've dealt with Ms. Marcella numerous times in the past and she's very, very cautious, she reported this incident both to the

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2 Special Commissioner's Office and to my
3 office at the same time.

4 MR. GROSSMAN: I understand, but,
5 however, I'm not getting into the
6 protocol. What I'm trying to ask you is
7 that you said before that this might have
8 been the father's theory and not the son's
9 theory; correct?

10 MR. BOYLES: Well, based on the
11 complaint that I got, which was referred
12 from the Office of Special Commissioner,
13 said that the father related these facts.

14 MR. GROSSMAN: Right. He related
15 these facts, but, however, --

16 MR. BOYLES: Now, to show me that
17 the father got that information from his
18 son seeing that the father is not in the
19 class.

20 MR. GROSSMAN: Okay, fair enough.
21 So, he got this information from his son?

22 MR. BOYLES: That's correct.

23 MR. GROSSMAN: So, therefore, his
24 son did contradict himself when now he's
25 saying that he doesn't believe there was

1
2 anything sexual in terms of what Mr.
3 Storman had done?

4 MR. BOYLES: Right, and my
5 conclusion indicated that we didn't
6 believe it was sexual in nature. I had
7 substantiated that part of it.

8 MR. GROSSMAN: Yes, I know that, but
9 I just wanted to make sure in terms of the
10 student's state of mind, in terms of
11 before and after.

12 Now, was Student A, to your
13 knowledge, a special education student?

14 MR. BOYLES: Yes.

15 MR. GROSSMAN: Did you conduct a
16 psychological background check on Student
17 A?

18 MR. GOLDBERG: Could you repeat that
19 again.

20 MR. GROSSMAN: Okay. Did you
21 conduct a psychological background check
22 on Student A?

23 MR. BOYLES: No, sir.

24 MR. GROSSMAN: So, there was no way
25 for you to know whether or not Student A

1
2 may have been emotionally disturbed?

3 MR. BOYLES: I believe Ms. Marcella
4 informed me that the students in the class
5 of special education, they are learning
6 disabled.

7 MR. GROSSMAN: Now, is it a fact the
8 other students that you interviewed, that
9 is Students B, C, D, E, F, G, H and I,
10 either did not remember the incident or
11 did not see Mr. Storman touch Student A
12 with a piece of paper?

13 MR. BOYLES: That's correct, which
14 is very common when you're dealing with
15 special education children.

16 MR. GROSSMAN: I didn't ask you
17 that. I didn't ask you, but, however,
18 there were special ed students who said to
19 you they did not see -- they saw an
20 incident, but they did not see Mr. Storman
21 touch the student with the paper?

22 MR. BOYLES: That's correct.

23 MR. GROSSMAN: Did Student H state
24 that Student A told him that he, that is,
25 Student A, was going to get Mr. Storman in

1
2 trouble?

3 MR. BOYLES: That's correct.

4 MR. GROSSMAN: Now, when you
5 interviewed Mr. Storman, did he tell you
6 that he wasn't sure if the piece of paper
7 in his hand touched Student A's lips, and
8 if he --

9 MR. BOYLES: (Inaudible)

10 MR. GROSSMAN: Wait let me finish my
11 question -- and if he did it, it was
12 accidental because Student A made a move
13 towards him or lunged towards him?

14 MR. BOYLES: He said that when he
15 approached the student, the student was
16 being disrespectful to a substitute
17 teacher. He approached the teacher -- he
18 approached the kid, he had a piece of
19 paper rolled up in his hand, and he might
20 have hit him, you know, or tapped him on
21 the face, but in a motion to tell the kid
22 to be quiet, and then he said, in
23 retrospect, he shouldn't have made
24 physical contact with the kid.

25 MR. GROSSMAN: Well, he denies that

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2 he said, in retrospect that he made
3 physical contact.

4 Did you attached a signed statement
5 of your interview with Mr. Storman to your
6 report?

7 MR. BOYLES: No.

8 MR. GROSSMAN: Okay. Now, in your
9 conclusion, --

10 MR. BOYLES: I also reviewed Mr.
11 Storman's written statement that he gave
12 to Ms. Marcella, where he indicated that
13 he, again, might have touched --

14 MR. GROSSMAN: He used the word, may
15 have.

16 MR. BOYLES: May have.

17 MR. GROSSMAN: I saw that statement.

18 Okay, now, in your conclusion, did
19 you state, the allegation that Mr. Storman
20 placed a rolled up piece of paper into the
21 mouth of Student A in a sexual manner is
22 unsubstantiated?

23 MR. BOYLES: Yes.

24 MR. GROSSMAN: Now, in the phrase
25 that you use, a rolled up piece of paper

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2 into the mouth of the student, aren't
3 those your words?

4 MR. BOYLES: No, those are the words
5 that were in the complaint.

6 MR. GROSSMAN: Can you show us any
7 words in the complaint that state that Mr.
8 Storman was accused of putting a rolled up
9 piece of paper, and the key phrase is,
10 into the mouth of Student A?

11 MR. BOYLES: Brushed it up against
12 his lips and teeth. I'm sure if he put it
13 in -- if he touched his teeth with it, he
14 would have had to put it in his mouth.

15 MR. GROSSMAN: Brushed against his
16 lips, okay, that's (inaudible)

17 MR. BOYLES: And his teeth. His
18 teeth are on the other side of his lips,
19 the inside of his mouth.

20 MR. GROSSMAN: Where do you see the
21 word, teeth, over here?

22 MR. BOYLES: Right, here, lips and
23 teeth (indicating).

24 MR. GROSSMAN: Where? What page?

25 MR. BOYLES: Page 1 of the Office of

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the Special Commissioner's referral sheet.

MR. GROSSMAN: 2.0 -- is this from
Mr. Hylan?

MR. BOYLES: No, no, the complaint.

MR. GROSSMAN: The complaint.

MR. BOYLES: You're reading the
final report.

MR. GROSSMAN: Okay. It says, --

MR. BOYLES: I don't know if you
have a copy of the complaint.

MR. GROSSMAN: It says, brushed a
rolled up piece of paper against his lips
--

MR. BOYLES: It's right here
(indicating).

MR. GROSSMAN: I haven't got that.
I'm referring -- this is the only evidence
that we have over here.

So, is there any statement in this
memorandum that indicates the word, teeth?
It just says, brushed his lips, doesn't
it?

MR. BOYLES: That is correct.

MR. GROSSMAN: Okay, nothing about

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2 teeth.

3 Now, when you stated, we're going
4 back to the -- however, that Mr. Storman
5 should not have made physical contact with
6 Student A when he was reprimanding him.
7 Now, did you ever --

8 (Whereupon, the Side A of the tape
9 ended.)

10 Now, are you aware that the
11 regulation of corporal -- well, first of
12 all, do you feel that the statement that
13 was made by Thomas Hylan, when he
14 communicated this to Ms. Josephine
15 Marcella, he well-substantiated.

16 Now, according to your belief, do you
17 believe that corporal punishment had taken
18 place at all?

19 MR. BOYLES: No, that's a boiler
20 plate letter. I believe that
21 inappropriate physical contact was made.
22 Corporal punishment and inappropriate
23 physical contact sometimes are two
24 different things, okay. If, you know, if
25 a teacher hauls off and smacks the kid in

1
2 the face, I mean, that's corporal
3 punishment, as opposed to inappropriate
4 physical contact. I didn't feel that this
5 rose to the level of corporal punishment.
6 I felt that it rose to the level of
7 inappropriate physical contact, and I
8 recommended that the case be forwarded to
9 Ms. Marcella for whatever disciplinary
10 actions she deemed appropriate.

11 MR. GROSSMAN: Let me go back to Ms.
12 Marcella.

13 Ms. Marcella, --

14 MS. MARCELLA: Yes.

15 MR. GROSSMAN: -- when you received
16 document 2.0 from Thomas Hylan and then
17 saw the "x" mark that substantiated, did
18 you believe that the corporal punishment
19 was substantiated?

20 MS. MARCELLA: Yes.

21 MR. GROSSMAN: Okay, but, however,
22 you just heard Mr. Boyles indicating that
23 he did not believe it was corporal
24 punishment, but, however, it was just
25 touching.

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MR. BOYLES: Inappropriate touching,
is what I said.

MR. GROSSMAN: All right. His
opinion was inappropriate touching. Now,
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MS. MARCELLA: But based --

MR. GROSSMAN: -- based upon what
you just heard, do you think that this
would merit an unsatisfactory rating, and
if not, would you be willing to change
this to satisfactory?

MS. MARCELLA: Well, I'll tell you,
I feel that this inappropriate touching
should not have happened. It may not rise
to the level of corporal punishment, as
Mr. Boyles has just stated, but in this
building here, and I have several
conferences on corporal punishment and
verbal abuse, this child was embarrassed.
To me, that rises to a level, and I don't
understand how you can equate two
different teachers, one that never had
inappropriate contact with a child and one
that does, and how both of them can get

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2 the same satisfactory rating. I think a
3 line has to be drawn somewhere, and as
4 principal, I would still support the
5 unsatisfactory rating in this case because
6 the child -- he could have asked the
7 child, you know, what the problem was, and
8 then we could have worked with behavior
9 management on a special education child or
10 on any child for that matter. However, by
11 brushing the paper up against his lips, he
12 embarrassed the child and then this should
13 not have been done. This is inappropriate
14 contact with the child. So, I stand by
15 the rating.

16 MR. GROSSMAN: Yes or no would have
17 done.

18 Okay, I have finished my cross-
19 examination --

20 MR. GOLDBERG: Okay. Thank you.

21 MR. GROSSMAN: -- for the time.

22 MR. GOLDBERG: Thank you, Mr.
23 Grossman.

24 Mr. Storman or Mr. Grossman, would
25 you like to make a statement?

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2 MR. GROSSMAN: Well, I'm going to be
3 asking questions --

4 MR. GOLDBERG: Questions, fine.

5 MR. GROSSMAN: -- of Mr. Storman,
6 and then I'm going to present evidence.

7 Mr. Storman, how long have you worked
8 for the Department of Education?

9 MR. STORMAN: (Inaudible)

10 MR. GOLDBERG: Speak louder, so we
11 can hear.

12 MR. STORMAN: Over twenty-five
13 years.

14 MR. GROSSMAN: How long have you
15 been a guidance counselor?

16 MR. STORMAN: Almost sixteen years.

17 MR. GROSSMAN: Now, on October 26th,
18 what drew your attention to Student A?

19 MR. STORMAN: He was using foul
20 language. He was cursing out the
21 substitute teacher in the classroom.

22 MR. GROSSMAN: This substitute
23 teacher, was he having difficulty with the
24 class --

25 MR. STORMAN: It was a she.

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MR. GROSSMAN: Was she having difficulty with the class as a result of him cursing at her?

MR. STORMAN: Very much so.

MR. GROSSMAN: So, did you feel that Student A was a danger or threat to the class by him cursing at his teacher?

MR. STORMAN: I believe so because she was going to lose control. She was losing control.

MR. GROSSMAN: Just answer yes or not.

Was it your intention to stabilize this confrontation going on between the student and teacher?

MR. STORMAN: Yes.

MR. GROSSMAN: By the way, Ms. Marcella mentioned before that you had embarrassed the student.

Do you think the student was embarrassing that substitute teacher?

MR. STORMAN: Embarrassing, very much so.

MR. GROSSMAN: The rolled up piece

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2 of paper that you had in your hand, when
3 did you have this rolled up piece of paper
4 in your hand? Was it before you went into
5 that classroom or after you went into that
6 classroom?

7 MR. STORMAN: Before.

8 MR. GROSSMAN: Before?

9 MR. STORMAN: Before.

10 MR. GROSSMAN: Okay. So, it's just
11 something that you had in your hand
12 without any expectation of having to --

13 MR. STORMAN: (Inaudible)

14 MR. GROSSMAN: You know, in other
15 words -- don't finish my question.

16 So, in other words, you had the
17 rolled up piece of paper before any
18 incident ever occurred; right?

19 MR. STORMAN: Yes.

20 MR. GROSSMAN: Before you even heard
21 the student curse?

22 MR. STORMAN: Yes.

23 MR. GROSSMAN: So, when you heard
24 the student cursing at the teacher, just
25 explain in your own words as to what you

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had done.

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MR. STORMAN: I had gone over to Robert -- I had gone over near where the child was, and in a motion, said, zip it.

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MR. GROSSMAN: How far away were you from the student?

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MR. STORMAN: When I started or when I --

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MR. GROSSMAN: In other words, when you said, zip it?

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MR. STORMAN: When I said, zip it, at least a foot. Approximately, a foot.

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MR. GROSSMAN: A foot away, okay.

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Now, you were standing and the student was sitting?

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MR. STORMAN: He was -- he was on his knees --

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MR. GROSSMAN: His knee was on the chair?

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MR. STORMAN: Correct.

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MR. GROSSMAN: That's how a kid sits sometimes.

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Now, did you make a motion with the piece of paper when you said, zip it?

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MR. STORMAN: Yes.

MR. GROSSMAN: Let's make believe I'm that student -- oh, by the way, before we do that, did the student move at all before or while you said, zip it?

MR. STORMAN: While I was saying, zip it, with the motion, he stood up and (inaudible)

MR. GROSSMAN: When you say, he stood up, did he just stand vertically up or did he go towards you?

MR. STORMAN: On an angle towards me.

MR. GROSSMAN: On an angle towards you?

MR. STORMAN: Yes.

MR. GROSSMAN: Okay. So, let's make believe that I'm that student, okay, only I'm not going to be cursing, and then you're the teacher. Why don't you stand up, okay, and at the same time -- and then let's roll up this regulation of the Chancellor, very fitting?

MR. STORMAN: Yes.

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MR. GROSSMAN: So then, therefore,
I'm at it. Now, where was the teacher
relative to the student?

MR. STORMAN: She was here
(indicating). The problem is -- you know
what the problem is -- the problem is
(inaudible)

MR. GROSSMAN: Okay.

Where was the teacher relative to --

MR. STORMAN: That would be like
(Inaudible)

MR. GROSSMAN: All right, so, where
that chair is approximately (indicating)?

MR. STORMAN: Correct.

MR. GROSSMAN: So, here I am, I'm
saying stuff to the teacher, okay, and
then you come over, and then show me
exactly what you had done?

MR. STORMAN: I said, zip it.

MR. GROSSMAN: So then, he turned to
you when you said, zip it?

MR. STORMAN: Right, I said --
right, I said, zip it (inaudible)

MR. GROSSMAN: Now, was it your

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intent -- sit down. Was it your intent to

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touch that child at all?

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MR. STORMAN: No.

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MR. GROSSMAN: The thing is that you

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just felt it was a natural reaction by

7

saying, zip it?

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MR. STORMAN: Correct.

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MR. GROSSMAN: And basically, you

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were trying to handle this verbally as the

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principal said you should have handled it,

12

didn't you?

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MR. STORMAN: Correct.

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MR. GROSSMAN: Now, you had no

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knowledge as to whether or not that paper

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touched or didn't touch the kid; is that

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correct? Did you have any knowledge

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whether --

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MR. STORMAN: Correct.

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MR. GROSSMAN: So, therefore, if it

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did happen, I mean, it's possible -- if it

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did happen, that would have been

23

accidental?

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MR. STORMAN: Absolutely.

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MR. GROSSMAN: Now, did you explain

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2 this to Mr. Boyles when he was questioning
3 you?

4 MR. STORMAN: Yes.

5 MR. GROSSMAN: And do you feel that
6 what he wrote, what he paraphrased what
7 you had said was taken out of context?

8 MR. STORMAN: Yes, it was.

9 MR. GROSSMAN: What you are saying
10 right here is the absolute truth --

11 MR. STORMAN: Absolute truth.

12 MR. GROSSMAN: -- of what occurred?

13 MR. STORMAN: Correct.

14 MR. GROSSMAN: Beyond this, I'm
15 going to -- I have a document which was
16 written by Arthur Solomon (phonetic), he
17 is a UFT representative, who had
18 accompanied Mr. Storman at the interview
19 with Mr. Boyles, and I'll read to you what
20 he printed that he signed his name, UFT
21 representative. To whom it may concern,
22 on December 16th, 2004, I accompanied Mr.
23 Glenn Storman at the OSI. The last
24 statement, paraphrasing Mr. Storman
25 regretting touching Student A, was taken

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2 out of context. He said that he may have
3 moved towards him, and if he touched him
4 with the paper in his hand, it was
5 accidental.

6 So, this is from --

7 VOICE: (Inaudible) document

8 MR. GROSSMAN: That will be document
9 1.

10 Now, I also had the regulation of the
11 Chancellor, which is A420. So, even if
12 Mr. Storman had accidentally touched the
13 child, the student on the lips, it says
14 very clearly that corporal punishment
15 shall not mean the use of reasonable
16 physical force for any of the following
17 purposes, and the one that would fit Mr.
18 Storman would be to protect another pupil
19 or teacher or any other person from
20 physical injury, and Mr. Storman felt that
21 this was escalating into something that
22 could have been violent because other
23 students were seeing that this student was
24 getting away with harassing and cursing at
25 another teacher. So, therefore, he did

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2 something about it. This would follow the
3 regulation of the Chancellor. So, this is
4 page 2 of 3 from A420.

5 VOICE: (Inaudible)

6 MR. GROSSMAN: Please, if I need
7 help, I'll ask for it.

8 I also have the Lewis Foy (phonetic)
9 arbitration decision, and I'll just put an
10 asterisk by the relevant paragraphs.

11 It says that the -- its says a
12 question -- this was written -- let me
13 first go by the date of this. This was
14 done September 1st of 1999, and this is
15 based upon precedent that existed before
16 this. The question before the arbitrator
17 of this proceeding was very
18 straightforward. The arbitrator must
19 determine whether the board made a
20 (inaudible) contractual standard before
21 the (inaudible) due consideration, in this
22 case, before the signing upon termination.
23 For the reasons set forth below, I find
24 that the board violated the standard set
25 forth in the agreement. On the question

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2 of due consideration, the decision of
3 arbitrator, Rosemarie Townley (phonetic),
4 in the Herbert Brown case, November 6th,
5 1995, was instructed, Arbitrator Townley
6 found that the reports -- in those days,
7 nobody argues with the investigation --
8 the reports of the OAR are in the nature
9 of an indictment, quote, for an individual
10 is charged based on evidence presented by
11 individuals who are not cross-examined.

12 So, we have no opportunity to cross-
13 examine Student A, and according to the
14 arbitrator's decision, we should have that
15 right, and it's also contained in the 6th
16 Amendment of the Constitution, that a
17 person must confront their accuser. As
18 such, Arbitrator Townley held an OAR
19 report is not (inaudible) positive with a
20 question before an arbitrator whether an
21 employee committed certain acts of
22 corporal punishment (inaudible).
23 Arbitrator Townley's decision was cited
24 (inaudible) with approval by Arbitrator
25 Arthur Regal (phonetic) in the Gregory

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2 White case on January 5th, 1998, in which
3 Arbitrator Regal found that the board
4 should not have used a report from the OAR
5 as its positive (inaudible) corporal
6 punishment.

7 So, I would like to submit this as an
8 appellant's document. Also, we would like
9 to make note that not only was that
10 particular student emotionally disturbed
11 and a special ed student, but that whole
12 class that he was in were in the same
13 boat. In other words, Mr. Boyles was
14 trying to say that they don't remember
15 things because of that condition. Well,
16 that whole class shows the potential of
17 what could happen to that substitute
18 teacher when emotionally disturbed
19 children see another student cursing at
20 another teacher and then if nothing would
21 have been done.

22 I also have various letters. I won't
23 read them to you because there are more
24 than a few. So, therefore, these letters
25 are written by various individuals who

1
2 know Mr. Storman, and they have
3 complimented him on the excellent work
4 that he has done regarding his
5 relationship with students as a guidance
6 counselor.

7 MR. GOLDBERG: Is that it, Mr.
8 Grossman?

9 MR. GROSSMAN: Yes.

10 MR. GOLDBERG: That's it.

11 MR. GROSSMAN: And the main thing is
12 that as indicated by Mr. Boyles, corporal
13 punishment was not the issue, and the
14 interpretation of the principal when she
15 received that report from Mr. Hylan was
16 that she thought that Mr. Storman -- it
17 was substantiated that he committed
18 corporal punishment, and that was not the
19 issue, and it is our contention that if
20 there was anything physical, it was simply
21 done accidental, no intent on the part of
22 Mr. Storman.

23 We have concluded. Now, the
24 administration may inquire if they wish.

25 MR. GOLDBERG: Any questions from

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the administration?

MS. MARCELLA: I have a question. I actually have a comment first.

MR. GROSSMAN: I object.

MR. GOLDBERG: It has to be in a form of a question through myself. Ask me a question, and I hope to get it answered for you.

MS. MARCELLA: Okay. We're talking about this child as being emotionally disturbed. The child is not emotionally disturbed, he's learning disabled. However, if this child was so disruptive, cursing and Mr. Storman thought he was such a danger, why didn't Mr. Storman bring this to the attention of myself or my assistant principal? We were not told anything about this.

MR. GROSSMAN: Her question is vague, the timing of this, when should he have done this?

MS. MARCELLA: Immediately.

MR. GROSSMAN: In other words, instead of confronting the child, he

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should have run to you?

MS. MARCELLA: Well, if the child was acting out so terribly and cursing the teacher and doing all these terrible things, why wasn't it brought to the administration?

MR. GROSSMAN: I'll let Mr. Storman answer that question.

MR. STORMAN: Because when I went over to him and I said to him to stop, to zip it, he basically stopped because I was attending to it. It ended there, basically.

MS. MARCELLA: He didn't what, I'm sorry?

MR. STORMAN: He stopped making any kind of difficult behavior and comments to the substitute teacher when I went over to him and to say, zip it. So, as the situation was ameliorated -- I come to you often when situations are like that, why wouldn't I come to you for that if it was warranted?

MS. MARCELLA: Well, that's my

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question because you're saying it's such a threatening manner, and you were fearful for the teacher's life and for the children's lives. I know the child.

MR. GROSSMAN: He answered the question. He handled it, period, okay.

MR. GOLDBERG: Okay.

MS. MARCELLA: Okay.

MR. GOLDBERG: Any other questions, please?

(No response.)

MR. GOLDBERG: Ms. Marcella, any other questions?

MS. MARCELLA: No, thank you.

MR. GOLDBERG: Okay. Would the administration like to make a final statement or stand on the record?

MS. MARCELLA: I'm standing on the record.

MR. SANTAMARIA: I'm also standing on the record.

MR. GOLDBERG: Mr. Grossman, the UFT advisor, for a final statement, please.

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2 MR. GROSSMAN: Yes. I would like to
3 say that this hearing should never have
4 occurred.

5 First of all, we find that it is
6 incomprehensible that the principal would
7 wait three weeks before contacting the
8 Office of Special Investigations or the
9 OSI and so forth, waiting for a particular
10 student to come to school. If anything,
11 somebody could have gone to their house,
12 and then if the parent -- and a parent is
13 allowed to be a complainant. It doesn't
14 have to be a student. Suppose, let's say,
15 the student was only five years old. A
16 student cannot possibly be a complainant
17 at that age, but yet often parents could
18 be a complainant. So, when the parent
19 made that phone call a few days after the
20 alleged incident, then that was the time
21 to have made a report. It is our belief
22 that the principal wanted to keep this
23 within the school, and did not want
24 anything to go beyond this. It was
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2 settled, and it was only until, I guess,
3 when something had occurred, in other
4 words, that few days later, when the
5 parent had made that complaint and said
6 something sexual, this is the boiling
7 point. This is where suddenly it has to
8 be reported to the Special Commissioner
9 because something sexual was being
10 reported.

11 Then, Mr. Boyles contained it when he
12 was asking questions, and then that boy
13 recanted. It was the boy, himself, who
14 told the father that he was guessing that
15 there was something sexually involved, and
16 then the father simply repeated this.
17 There's no way the father could have
18 known. He didn't see the incident. He's
19 only getting what he hears from the kid.

20 Then the kid recants, and said, well,
21 it was not sexual. Then he's saying that
22 the piece of paper had brushed his lips,
23 but meanwhile, Mr. Boyles had already
24 questioned a numerous number of students
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2 who either didn't remember it or they
3 simply -- they did remember it, but didn't
4 see any touching whatsoever. And we find
5 that it was somewhat disingenuous on the
6 part of Mr. Boyles because after all,
7 you're not getting an exact quotation from
8 Mr. Storman in this report. He is
9 paraphrasing. Anyone can doctor this
10 anyway they want when they paraphrase it,
11 so then they make it look like Mr. Storman
12 is actually saying, gee, I might have
13 touched his lips, and if I did, I regret
14 it. In other words, therefore, he is
15 trying to base a case of, let's say,
16 inappropriate touching, not based upon
17 evidence. Here we have Student A who is
18 contradicting himself. So, his testimony
19 is completely out. He has no credibility.
20 And then as far as the other students are
21 concerned, which is the meat of the case,
22 those other students either did not
23 remember it or they didn't see it. So,
24 therefore, the only place where Mr. Boyles
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2 can hang his hat on to say something in
3 the nature of something negative against
4 Mr. Storman would be out of Mr. Storman's
5 mouth, himself. However, we have shown
6 that Mr. Solomon had been there with Mr.
7 Storman, and he wrote exactly what Mr.
8 Storman had said, that he may have, and he
9 said that in his own statement to the
10 principal. May, does not mean that he
11 definitely did do it. He doesn't know,
12 but it was not his intent, and then if it
13 happened, this student had moved towards
14 him, and the thing is that there was no
15 intent on the part of Mr. Storman to
16 commit corporal punishment, and,
17 therefore, to say anything less than that,
18 for the principal to now say that she
19 would have given him a "U" rating anyway,
20 is disingenuous because the thing is that
21 she is worried about a student being
22 embarrassed. Well, how about that
23 substitute teacher? That substitute
24 teacher was embarrassed also. Does that
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2 count? Instead, we should reverse the
3 zoo, and, therefore, there should be no
4 control, and that's exactly what is
5 happening over here.

6 Mr. Storman, if he didn't do anything
7 and ran to the administration and couldn't
8 find somebody, God knows what would have
9 happened in that classroom. He did what
10 any normal person should have done, was
11 simply control that child, and if
12 something accidentally happened by
13 brushing something against his lips, I
14 assure you if nothing sexual was involved,
15 this would not have reached the Special
16 Commissioner or the OSI, but it's only
17 because of that sexual business is what
18 brought it to their attention and this
19 whole thing was done. It just would have
20 been that he may have done something
21 accidentally, brush his lips, it would
22 have stayed in the school. I can't see
23 anything going beyond the school for
24 something as stupid as this, but yet here
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2 we have it.

3 So, therefore, I can only say that I
4 hope that the recommendation made to the
5 Chancellor is not to ruin this man's
6 reputation and his career by having this
7 on his record of unsatisfactory, but this
8 should be overturned to satisfactory, and,
9 therefore, I hope that the final decision
10 made by the Deputy Chancellor or the new
11 Deputy Chancellor, whoever that might be,
12 would be justice, not revenge, in order to
13 rectify a situation which was blown way
14 out of proportion. First, something
15 sexual, then you heard something about
16 teeth and into the mouth. This is words
17 made up by Mr. Boyles. Nothing in this
18 report said anything about a paper being
19 put into his mouth. So, we find that this
20 was not a very objective investigation
21 that was done. This was done to nail this
22 man, and then for Mr. Hylan to check off
23 something substantiated. He doesn't tell
24 you what is substantiated, but, however,
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2 the words corporal punishment are written
3 above it. So then, he would have you
4 believe that corporal punishment was
5 substantiated.

6 So, therefore, we have people being
7 disingenuous, being untruthful and being
8 false, in terms of bringing information
9 against an innocent person.

10 So, therefore, I feel that this
11 should be completely reversed, period.

12 MR. GOLDBERG: I want to thank all
13 the parties for your participation and
14 cooperation.

15 A written report will be generated to
16 the Chancellor, who in turn will forward a
17 written decision to all the participants.

18 It is now approximately 2:25, and I
19 am concluding this review.

20 Have a good day, and thank you for
21 your participation.

22 VOICES: Thank you.

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I, Dorothy Florentino, do hereby state
that the foregoing was transcribed from an
audio/video tape cassette to the best of my
ability.



Dorothy Florentino

Agency Name: AGENCY DEPOMPO COURT
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Staten Island, New York 10306

Dated:

Sept 11, 2006

CERTIFICATION OF SERVICE

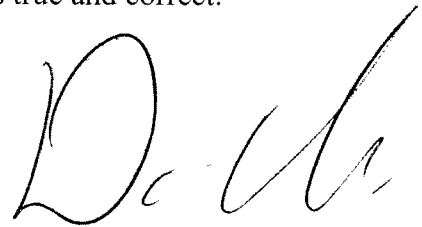
I, Daniel Chiu, hereby certify that:

On October 12, 2007, I served the annexed Reply Declaration in Further Support of Defendant's Motion to Dismiss by depositing a true and correct copy, into the custody of United States Postal Service, in an enclosed envelope with sufficient postage for first-class mail addressed to:

John C. Klotz, Esq.
Attorney for Plaintiff
350 Fifth Avenue, Suite 4810
New York, New York 10118

I certify under penalty of perjury that the foregoing is true and correct.

Dated: New York, New York
October 12, 2007

A handwritten signature in black ink, appearing to read 'D. Chiu', is written over a horizontal line.

Daniel Chiu